

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:09CR378
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
JOSE TOMAS LOPEZ-RENDON,)	
)	
Defendant.)	

This matter is before the Court on the pro se motion filed by the Defendant, Jose Tomas Lopez-Rendon, to Vacate, Set Aside, or Correct His Sentence Pursuant to 28 U.S.C. § 2255 (“§ 2255 motion”) (Filing No. 63). Although captioned as a “Pro-Non-Tunk Notice of Appeal de-novo Review,” the pleading consists of claims appropriately raised in a § 2255 motion.

Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order.

Judgment was entered on June 18, 2010. The Defendant did not file a direct appeal. The Court denied the Defendant's previous motion to extend the deadline for the filing of a § 2255 motion, which was required to be filed on or before July 6, 2011.

Under 28 U.S.C. § 2255, a defendant has one year to file a § 2255 motion from “the date on which the judgment of conviction becomes final.” In this case, the one-year period

began to run on July 6, 2010, the last day the Defendant could have timely filed a direct appeal. Fed. R. App. P. 4(b)(1)(A)(i), 26(a)(2) & 26(c) (2006); *Murray v. United States*, 313 Fed. Appx. 924, at **1 (8th Cir. Mar. 10, 2009) (conviction became final when the time for filing a notice of appeal expired). Because the Defendant's § 2255 motion was placed in the prison mail system on November 29, 2011, and filed on December 2, 2011, the motion is untimely.

IT IS ORDERED:

1. The Court has completed the initial review of the Defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Filing No. 63);
2. Upon initial review, the Court summarily denies the Defendant's § 2255 motion as untimely, and therefore the motion (Filing No. 63) is summarily denied;
3. A separate Judgment will be issued denying the § 2255 motion; and
4. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 8th day of December, 2011.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge